

## Social and Economic Rights

This Background Paper aims to provide some answers to some of the most frequently asked questions about including social and economic rights in a Bill of Rights, to inform discussion about how a new Charter or Bill of Rights would add to the Human Rights Act:

- Why include social and economic rights in a modern Bill of Rights?
- What are the most common objections?
- What are the different options for protecting social and economic rights in a Bill of Rights?
- How would it work in practice? Some examples from South Africa.
- What sort of social and economic rights could be included?
- Who will be entitled to these social and economic rights?

Appended at pages 11-21 are some relevant extracts from the Universal Declaration on Human Rights, the International Covenant on Social and Economic Rights, the Constitution of South Africa and the Constitution of India.

### **1. Why include social and economic rights in a modern Bill of Rights?**

There are a number of positive reasons:

#### ***Reason 1: Reclaim the language of "Security"***

Including social and economic rights within a Bill of Rights is a powerful symbol of a commitment to security in the sense of freedom from want rather than just freedom from fear. It is therefore an opportunity to reclaim the language of security: to make a symbolic break from the present focus on insecurity, based on fear, and to replace it with a more positive focus on security in the sense of freedom from want.

The current security agenda, typified in the Queen's Speech, is based on freedom from fear and plays on people's insecurities about terrorism, crime and immigration. The process of defining our most basic mutual commitments, by contrast, is a much more positive "security" agenda, based on meeting people's aspirations to be free from basic want, for example, into old age or in the event of a disabling accident.. It stresses optimism over fear and insecurity.

#### ***Reason2: The need for a new conception of "rights"***

The language of rights has become the preserve of the libertarian or the pure liberal, preserving the individual's freedom against the interfering state. But the right to various forms of economic security is equally a right: indeed it



can be seen as the precondition of meaningful liberty. As FDR put it in 1944, "Freedom from fear is eternally linked with freedom from want".

Such rights positively require the State to intervene in various ways to guarantee that security. It is therefore an opportunity to reclaim the language of rights for a politics that believes in the necessity of government intervention. A Bill of Rights including social and economic rights recognises the centrality of the state, and thus of government, in securing the basic social provisions which many believe define (or should define) our society. It also synthesises the language of rights with the need for government-led reform in order to deliver those rights.

### ***Reason 3: Continuity with Treasury policy since 1997***

There is a very direct connection between a commitment to the security which is brought by the enjoyment of social and economic rights and many of the most important policy goals of the Treasury since 1997: the New Deal for the long term unemployed, the reduction in unemployment, the national minimum wage, increasing access to education and vocational training, and the aim to eradicate child poverty. These all concern the right to economic security. Seeking to enshrine such commitments into a foundational or constitutional document will therefore seem to be a logical next step flowing from the previous decade's work. Making them a key part of a Bill of Rights at a time when we happen have an Opposition which would struggle publicly to oppose them would also secure the legacy of that work by making it much more difficult for a future administration to reverse the positive changes.

### ***Reason 4: Articulate Britain's defining commitments***

Any understanding of Britain's defining commitments would clearly include the very popular commitments to provide economic and social security to its inhabitants. In the most recent Joseph Rowntree State of the Nation poll (October 2006), 88% thought that the right to hospital treatment on the NHS within a reasonable time should be included in a Bill of Rights, and 65% thought that the right of the homeless to be housed should also be included. These commitments are now seen as being just as fundamental as the rights in Magna Carta, e.g. to jury trial and to be free from unreasonable search and seizures.

Opinion poll evidence from Northern Ireland shows the same consistently high level of support for including specific protection for social and economic rights in a Bill of Rights for Northern Ireland, including the right to a reliable health service, good education, social security, decent jobs and proper housing: 76% in 2004, with 72% in favour of a duty on government and public bodies to guarantee economic and social rights (Northern Ireland Human Rights Commission, *Progressing a Bill of Rights for Northern Ireland: An Update* (April 2004)).



At present, for many (maybe most) people, the Human Rights Act and the protections it provides feel very distant. The popular perception, whipped up by the tabloids and others, is that the rights it contains are not for "people like us", but are for asylum seekers, Gypsies, prisoners, terrorists, and so on. Although that is factually wrong as an appreciation of the HRA rights, a Bill of Rights containing social and economic rights would be a powerful way of making the protections of the Bill of Rights relevant to "people like us".

Such a Bill of Rights could thus provide an underpinning definition of the kind of society we have and want to secure: Britain is a country in which people have access to health care free at the point of delivery, children have access to full time education suited to their needs and so on, **and** we have fair trials, free speech, and so on.

That greater legitimacy and sense of popular ownership would be key in making the Bill of Rights into a powerful political and legal foundation from which to resist those people who seek to deploy illegitimate means to undermine that society and those rights.

#### ***Reason 5: Entrench the consensus underpinning the welfare state***

Today there is a widespread consensus, amongst the public and across the political parties, about, for example, the right to social security, to a good education, to adequate health care. Beginning a Bill of Rights process is an opportunity to enshrine that consensus into a document with a much higher status than the ordinary laws which currently give effect to these commitments. It would give those commitments a much higher status than their current status as mere policies, which could be changed tomorrow.

Entrenching a commitment to certain basic features of the welfare state, and to the progressive realisation of certain rights, should make it more difficult for any future government to undermine those basic commitments. Including a commitment to the progressive realisation of certain rights should make it more likely that the rights are realised in practice, much as the setting of timetabled goals for, eg. eradicating child poverty, locks policy-making into the achievement of that goal.

#### ***Reason 6: Embed an engine for transformation in the constitution.***

The constitution or bill of rights should not be a merely backward-looking document, preserving traditions, but should contain commitments which carry reform forward. It should be transformative, not merely preservative, by setting out aspirations that contain a challenge to longstanding practices, particularly where these are based on inequality. The inclusion of social and economic rights would serve this transformative purpose.

#### ***Reason 7: Link economic and educational security to countering terrorism and other forms of extremism***



There is a clear link between economic security and countering terrorism and other forms of extremism: members of minority communities may be tempted by extremists because economic disadvantage means they feel they do not have a stake in their community; and poorer British people may be tempted by the extreme messages of the BNP for similar reasons. It therefore helps to provide an account of social democracy which is capable of responding to the current range of threats to security, from terrorism, crime, and climate change.

***Reason 8: Distinguish this Bill of Rights from the Conservatives' Bill of Rights***

The Conservative Party is highly unlikely to want to include social and economic rights in the Bill of Rights which it is likely to be promoting. Theirs is likely to be concerned primarily if not solely with liberty in a narrow sense, with no acknowledgment that we are neither free nor secure without being free from basic wants. Protection for social and economic rights will therefore be an important point of distinction from the Conservatives' Bill of Rights. It will make it a distinctively social democratic bill of rights. On the other hand, it will be difficult for the Conservatives to oppose the inclusion of social and economic rights, particularly in light of the apparent popularity of such a move.

**2. What are the most common objections?**

There are three main objections:

***Objection 1: It hands too much power to the courts and so is undemocratic.***

This is probably the most frequently heard objection: including social and economic rights in a bill of rights hands decisions about resources and priorities to the unelected and unaccountable judges and therefore limits considerably the scope for Government action.

This objection ignores important recent developments in the constitutional protection of social and economic rights. The social and economic rights chapter of a Bill of Rights can be drafted in terms of a commitment to progressive realisation of a goal, within available resources, leaving it to detailed legislative measures to work out how to fulfil that goal and subject to budgetary constraints. If the rights are drafted in a way which squarely acknowledges the budgetary problem, this immediately constrains the scope for judges to behave undemocratically. Some concrete examples of the courts being constrained in this way are given below, from South Africa.

In any event the courts already make decisions about social and economic rights in judicial review cases concerning the State's various statutory duties



to provide education, social care or other welfare services to people. An example is the situation in which a local authority is failing to provide to a child the provision to which their Statement of Special Educational Needs entitles them. Such cases are key to ensuring that state organs do what is legally required of them. To this extent our courts are already very familiar with having some role in the enforcement of such rights.

It is therefore untrue to say that such rights are currently non-justiciable. The main difference is that, at the moment, the rights in play are not set out in a coherent and consistent way: at best they are to be found in various pieces of legislation which at best make sense only to lawyers. It is just about possible to put together a "right to education" of sorts from disparate bits of legislation, but not a "right to health care", even though most people would believe that both exist and both are fundamental.

***Objection 2: It involves the courts in making decisions about resources and priority setting that they are ill-equipped to take.***

A variant of the anti-democratic argument is that including social and economic rights in a Bill of Rights inevitably involves the courts making decisions about resources or choosing between competing priorities, decisions which they not only lack the democratic legitimacy to take but they also lack the practical capacity to make well.

It is true that, quite apart from the democratic objection, courts are not well equipped to perform this task, or to oversee the delivery of, say, education or adequate health care to those who need it. However, this does not mean to say that courts should have no role at all. The question is whether there is some role for courts which stops short of the allocating of resources or reassessing priorities set by the democratic branches.

As the practical examples below demonstrate, if the text recognises the dependence of the rights on available resources the role of the courts in allocating resources or setting priorities is extremely limited.

***Objection 3: The rights themselves are too vaguely expressed and will only raise expectations and encourage time-consuming and expensive litigation against public bodies***

A right to health, for example, might be thought to encourage every individual to litigate if they are denied a particular form of treatment, or a particular operation, and the concern is that courts will be over-influenced by the personal tragedy of the individual patient and make decisions which upset carefully balanced priorities based on much wider considerations.

Again the answer to this objection lies in the definition of the rights in the text of the Bill of Rights and in making clear in the drafting that the goal is one of progressive realisation and that while the courts have a role it is a



limited one. As explained further below, the actual experience of the South African example in practice demonstrates that this objection can be pre-empted with proper drafting.

These three objections are considered in more detail in the Report of the Joint Committee on Human Rights on *The International Covenant on Economic, Social and Cultural Rights* (21<sup>st</sup> Report of 2003-04 at paras 59-74).

### **3. What are the different options for protecting social and economic rights in a Bill of Rights?**

There are basically three models:

#### ***Model 1: Legally enforceable constitutional rights***

In a number of Scandinavian and Eastern European countries, social and economic rights are protected as legally enforceable rights in the Constitution. Finland, for example, has a constitutional guarantee of "the right to basic subsistence in the event of unemployment, illness and disability and during old age as well as the birth of a child or the loss of a provider". In countries such as Latvia, Estonia, Poland and Romania, the Constitutional Court has struck down laws which unduly restrict constitutional rights to certain types of subsistence benefits.

The common objection to this model is the fear that it will lead to the courts interfering with perfectly reasonable legislative judgments about priority setting.

#### ***Model 2: Directive principles of State policy***

Other countries give constitutional recognition to social and economic guarantees as goals, but not as legally enforceable rights. The Constitution of India, for example, contains a number of "directive principles of State policy", which the Constitution expressly says "shall not be enforced by any court", but which are nevertheless recognised as fundamental in the governance of the country and the State is under a duty to apply those principles when making laws. These principles include various duties to direct its policies towards securing, for example, the right to work, to education and to a higher standard of living and level of nutrition and public health. The Constitution of Ireland takes a similar approach.

This model keeps the courts out altogether but it risks the constitutional commitments being meaningless in practice. When the possibility of judicial enforcement exists, it is more likely that the relevant rights will in practice receive respect. Even democratic societies which have declared their own commitment to a set of fundamental values can often fail to implement them and to ignore the needs of its most vulnerable members.



***Model 3: A duty of progressive realisation of social and economic rights by reasonable legislative and other measures, within available resources***

Is there a straightforward choice between social and economic rights as mere goals or as legally enforceable rights, or is some combination of the two possible? The South African example is the best example of a hybrid: it recognises the relevant rights, but within the context of a duty of progressive realisation of those rights by reasonable legislative and other measures, within available resources. This model gives *some* role to the courts, but not a very substantial one. It does not eliminate the judicial role, but confines it within narrow parameters, so as to allow courts to respond only to large-scale violations

Such a hybrid model combines the advantages of the other two models whilst avoiding their main disadvantages. On this third model, implementation of the basic commitments spelled out in the bill of rights is still primarily through democratic processes rather than the courts, but with the possibility of a degree of judicial involvement in extreme cases (eg. of unjustifiable omission of provision for a particular vulnerable group). Individuals do not have legally enforceable rights against the State to full protection of the rights recognised by the bill of rights. But resort to the courts might be possible if one particular vulnerable group was being neglected altogether, because then the State is failing to take reasonable legislative and other measures, within available resources, to achieve progressive realisation of the rights. So there is scope for some judicial role in enforcing the constitutional provision, but the caveats surrounding the definition of the rights mean that there is very little scope indeed for judicial interference with priority setting.

**4. How would it work in practice?**

How the inclusion of social and economic rights in a bill of rights would work in practice can be shown by some examples from South Africa.

***(1) The right to health***

***(a) No right to kidney dialysis treatment***

Mr. Soobramoney was a diabetic with chronic kidney failure. He was refused admission to the dialysis programme of a state hospital because the hospital had a severe shortage of dialysis machines and trained nursing staff. Because of limited resources the hospital had adopted a policy of admitting only those patients who could be cured within a short period or those eligible for a kidney transplant. Mr. Soobramoney claimed that he had a constitutional right to receive kidney dialysis treatment, relying on the provisions in the South African Bill of Rights that no-one may be refused



emergency medical treatment (section 27(3)) and that everyone is entitled to have access to health care services provided by the state (section 27(1)(a)).

The Constitutional Court rejected his claim. It held that the right not to be refused emergency medical treatment did not mean that the treatment of terminal illnesses had to be prioritised over other forms of medical care such as preventative health care. It meant that a person who suffers a sudden catastrophe which calls for immediate medical attention should not be denied ambulance or other emergency services which are available and should not be turned away from a hospital which is able to provide the necessary treatment.

The Court also rejected the argument based on the state's constitutional obligation, within its available resources, to provide health care. It held that if treatment had to be provided to Mr. Soobramoney it would also have to be provided to all others in a similar position and the resources available to the hospital could not accommodate the demand. The responsibility for making the difficult decisions of fixing the health budget and deciding upon the priorities that needed to be met lay with the political organs and the medical authorities and the Court would be slow to interfere with such decisions if they were rational and taken in good faith.

*(b) Failure to devise programme for combating mother to child transmission of HIV*

In another case, *Minister of Health v Treatment Action Campaign*, the Court considered a challenge to the failure of the South African government to make available the anti-retroviral drug nevirapine, which would prevent the transmission of HIV from mothers to babies. The Court found this to be an unreasonable denial of rights to healthcare and to children's healthcare under sections 27 and 28 of the Constitution. It held that the government had failed to discharge its obligations under section 27(1) to devise and implement a comprehensive and co-ordinated programme to combat mother-to-child transmission of HIV.

In reaching this conclusion, the Court took account of the reliable evidence available, both nationally and internationally, that nevirapine was safe; the minimal cost, which was well within the State's resources, of making the drug widely available; and the fact that its prescription did not involve complex additional training for healthcare staff. The Court ordered the removal of restrictions on the availability of nevirapine, and the taking of reasonable measures to extend testing and counselling facilities throughout the public health service, to facilitate and expedite the use of the drug.

***(2) The right to shelter***



In *Government of South Africa v Grootboom*, the Constitutional Court found that the State's failure to provide emergency accommodation for homeless applicants was an unreasonable denial of their right to adequate housing in section 26 of the Bill of Rights. The applicants had been evicted from an illegal squatter camp, and were living in a sports stadium in extremely difficult and unhealthy conditions. Whilst government programmes were in place to develop social housing in the medium and long-term, the Court found that the absence of any government programme to address the needs of those in immediate need of emergency shelter, within the available resources, was an unreasonable interference with the right to adequate housing. It held that—

“.... to be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right.”

The Court ordered the Government to implement a programme, within available resources, to address the need for emergency housing as part of the right of access to adequate housing.

These cases show that the South African Constitutional Court has steered a middle path between Models 1 and 2 above. It has expressly rejected an approach which would require the State to provide certain minimum standards of economic and social rights to all, because it recognizes that the courts are ill-equipped to adjudicate on issues where court orders could have multiple social and economic consequences for the community. But at the same time it has recognized that there is *some* albeit restrained role for the courts, namely to require the state to take measures to meet its constitutional obligations and to subject the reasonableness of those measures to evaluation.

## **5. What sort of social and economic rights could be included?**

FDR's list of social and economic rights (announced in his State of the Union in 1944, in which he called for the recognition of the need for a "Second Bill of Rights", to supplement the original Bill of Rights and to provide a new basis of prosperity and security for all) included the following rights:

- The right to work (to "a useful and remunerative job")
- The right to a minimum wage ("to earn enough to provide adequate food and clothing and recreation")
- The right to be free of unfair competition
- The right to a decent home
- The right to adequate medical care
- The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment



- The right to a good education

This list broadly covers the ground, although more modern constitutions often include more detailed rights. FDR's Second Bill of Rights clearly influenced the subsequent international treaties, including the Universal Declaration of Human Rights (see Appendix), the International Covenant on Economic, Social and Cultural Rights, which have in turn influenced national constitutions such as those of South Africa and India - see relevant extracts attached.

## **6. Who will be entitled to these social and economic rights?**

Where social and economic rights are guaranteed by Bills of Rights, are they confined to citizens alone? Should they be?

Some distinctions on grounds of nationality are clearly justifiable within the larger set of social and economic rights. For example, contributory benefits require participation in a scheme of national insurance, and only UK citizens are entitled to pensions. There is nothing wrong with national employment policies aiming to ensure that every citizen has a job, or a minimum level of education and social security.

But at least a minimum level of protection for some of these social and economic rights is so fundamental to treating fellow human beings with humanity that they cannot be denied to non-citizens who are present in the jurisdiction. The European Court of Human Rights has held that discrimination on grounds of nationality in access to emergency social assistance requires very strong justification (*Gaygusuz v Austria*). In South Africa the Constitutional Court has held that the exclusion of permanent residents who were not South African citizens from provision of social welfare benefits was an unreasonable and unjustifiable interference with the constitutional right to social security. Even in the US the Supreme Court has held that a free public education cannot be withheld from children who are in the country illegally.

In fact, including social and economic rights in a Bill of Rights will not introduce any change in this respect. It is already the case in the UK that the most basic level of provision is available to non-citizens: e.g. there is a duty to provide education to the children of asylum seekers, a duty to provide accommodation and subsistence benefits even to failed asylum seekers pending their return, a duty to provide emergency medical assistance to anyone in need of it, and a duty to protect anyone against utter destitution so long as they are in the jurisdiction.



## **Appendices**

### **Universal Declaration of Human Rights Art.s 22-26**

#### **Article 22.**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### **Article 23.**

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

#### **Article 24.**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### **Article 25.**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.



**Article 26.**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.



**International Covenant on Economic, Social and Cultural Rights,  
Art.s 2-13**

***Article 2***

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

***Article 3***

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

***Article 4***

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

***Article 5***

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III**



## **Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

## **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

## **Article 8**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;



(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

#### **Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

#### **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the



realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.



2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.



## **Constitution of South Africa ss. 26-29**

### **26 Housing**

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

### **27 Health care, food, water and social security**

1. Everyone has the right to have access to-
  - a. health care services, including reproductive health care;
  - b. sufficient food and water; and
  - c. social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

### **28 Children**

1. Every child has the right-
  - a. to a name and a nationality from birth;
  - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - c. to basic nutrition, shelter, basic health care services and social services;
  - d. to be protected from maltreatment, neglect, abuse or degradation;
  - e. to be protected from exploitative labour practices;
  - f. not to be required or permitted to perform work or provide services that-
    - i. are inappropriate for a person of that child's age; or
    - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
  - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
    - i. kept separately from detained persons over the age of 18 years; and
    - ii. treated in a manner, and kept in conditions, that take account of the child's age;



- h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
  - i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
- 2. A child's best interests are of paramount importance in every matter concerning the child.
- 3. In this section 'child' means a person under the age of 18 years.

## **29 Education**

- 1. Everyone has the right-
  - a. to a basic education, including adult basic education; and
  - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
- 2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-
  - a. equity;
  - b. practicability; and
  - c. the need to redress the results of past racially discriminatory laws and practices.
- 3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-
  - a. do not discriminate on the basis of race;
  - b. are registered with the state; and
  - c. maintain standards that are not inferior to standards at comparable public educational institutions.
- 4. (4) Subsection (3) does not preclude state subsidies for independent educational institutions.



**Constitution of India Art.s 37-39, 41, 45 & 47**

**DIRECTIVE PRINCIPLES OF STATE POLICY**

**36. Definition.**—In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

**37. Application of the principles contained in this Part.**—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

**38. State to secure a social order for the promotion of welfare of the people.**—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

**39. Certain principles of policy to be followed by the State.**—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**39A. Equal justice and free legal aid.**—The State shall secure that the operation of the legal system promotes justice, on a basis



of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

**41. Right to work, to education and to public assistance in certain cases.**—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

**42. Provision for just and humane conditions of work and maternity relief.**—The State shall make provision for securing just and humane conditions of work and for maternity relief.

**43. Living wage, etc., for workers.**—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

**43A. Participation of workers in management of industries.**—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

...

**45. Provision for free and compulsory education for children.**—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.